

268 NLRB No. 223

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New Madrid, MO

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NORANDA ALUMINUM, INC.

and

Case 14--CA--17040

UNITED STEELWORKERS OF AMERICA,
AFL--CIO, CLC

CORRECTION

On 29 February 1984 the National Labor Relations Board issued a Decision and Order in the above-captioned case.

Please correct your copy to add footnote 2 to the bottom of page 3.

² The Respondent filed no objections to the conduct of the election.

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DECISION AND ORDER

Upon a charge filed by the Union on 5 October 1983,¹ the General Counsel of the National Labor Relations Board issued a complaint on 17 October against Noranda Aluminum, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The complaint alleges that on 20 September, following a Board election in Case 14--RC--9750, the Union was certified as the exclusive collective-bargaining representative of the Company's employees in the unit found appropriate. (Official notice is taken of the "'record'" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g), amended Sept. 9, 1981, 46 Fed.Reg. 45922 (1981); Frontier Hotel, 265 NLRB No. 46 (Nov. 9, 1982).) The complaint further alleges that since 29 September the Respondent has refused to bargain with the Union. On 19

¹ All dates are in 1983, unless otherwise indicated.

October the Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On 7 November the General Counsel filed a Motion for Summary Judgment. On 9 November the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent's answer admits its refusal to bargain with the Union, but claims that it was justified in doing so since the bargaining unit certified by the Board is, in its view, not an appropriate one. The General Counsel argues that this and all other material issues have been previously decided by the Board. We agree with the General Counsel.

The record, including the record in Case 14--RC--9750, reveals that the Regional Director issued a Decision and Direction of Election dated 11 August. The Respondent, thereafter, filed a request for review with the Board alleging that the Regional Director erred in ruling that occupational health nurses are not managerial employees, in finding that self-organization would not create a conflict with the nurses' job responsibilities, and in holding that the occupational health nurses constitute a well-defined professional group appropriate for collective-bargaining purposes. The Board denied the Respondent's request for review on 13 September, finding that no substantial issues warranting review had been raised. On 12 September an election was held pursuant to the Regional Director's Decision and Direction of Election dated 11 August. The tally of ballots shows that of approximately four eligible voters, three cast valid ballots for and one against the Union; there were no

challenged ballots.² On 20 September the Board certified the Union as the exclusive bargaining representative of the employees in the unit found appropriate.

On or about 28 September the Union, by telephone, requested that the Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the employees in the appropriate unit. The Respondent, however, has failed and refused to recognize and bargain with the Union on the grounds that the unit certified by the Board is not an appropriate one.

It is well settled that in the absence of newly discovered and previously unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues that were or could have been litigated in a prior representation proceeding. See Pittsburgh Glass Co. v. NLRB, 313 U.S. 146, 162 (1941); Secs. 102.67(f) and 102.69(c) of the Board's Rules and Regulations.

All issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. There are no factual issues regarding the Union's request for recognition and collective bargaining because the Respondent, in its answer, admits that it has refused to recognize and bargain collectively with the Union. We therefore find that the Respondent has not raised any issue that is properly litigable in this unfair labor practice proceeding. Accordingly we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

² The Respondent filed no objections to the conduct of the election.

Findings of Fact

I. Jurisdiction

The Respondent, a Delaware corporation, maintains a manufacturing facility in New Madrid, Missouri, where it is engaged in the manufacture and distribution of finished and unfinished aluminum products. During the past 12 months, a representative period, the Respondent manufactured, sold, and caused to be shipped from its New Madrid, Missouri plant goods and materials valued in excess of \$50,000 directly to points and places located outside the State of Missouri. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Certification

Following the election held 12 September the Union was certified on 20 September as the collective-bargaining representative of the employees in the following appropriate unit:

All occupational health nurses employed at the Employer's New Madrid, Missouri, facility, EXCLUDING office clerical and all other professional employees, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since 28 September the Union has requested the Respondent to bargain, and the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By refusing to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Noranda Aluminum, Inc., New Madrid, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Steelworkers of America, AFL--CIO, CLC, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All occupational health nurses employed by the Employer at its New Madrid, Missouri, facility, EXCLUDING office clerical and all other professional employees, guards, and supervisors as defined in the Act.

(b) Post at its facility in New Madrid, Missouri, copies of the attached notice marked "'Appendix.'"³ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

³ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.

29 February 1984

Don A. Zimmerman,

Member

Robert P. Hunter,

Member

Patricia Diaz Dennis,

Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Steelworkers of America, AFL--CIO, CLC, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All occupational health nurses employed at the Employer's New Madrid, Missouri, facility, EXCLUDING office clerical and all other professional employees, guards, and supervisors as defined in the Act.

NORANDA ALUMINUM, INC.

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 210 Tucker Boulevard North, Room 448, St. Louis, Missouri 63101, Telephone 314--425--4361.